

Montana Water Court
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FILED
08/09/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0831-R-2022
Lambert, Kathryn
4.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Robert L. White

CASE 43B-0831-R-2022
43B 195185-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

This remark was not addressed through the objection process. The Water Court is required to

resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The December 6, 2022 Order Consolidating Case And Setting Deadlines Pursuant to Section 85-2-248(5), MCA set various deadlines for the claimant and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation [“DNRC”] to resolve the issue remark. The March 20, 2023 DNRC Memorandum states the claimant did not contact the DNRC and makes recommendations to resolve the issue remark. The May 19, 2023 Order Entering Default and Order Setting Deadline Pursuant to Section 85-2-248(9)(a), MCA states:

The DNRC Memorandum recommends changing the point of diversion legal description to the SESWSW section 1, T3S, R9E, PARK. Pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline is **June 16, 2023** for the claimant to show cause in writing why the Court should not proceed with amending claim 43B 195185-00 as described above pursuant to section 85-2-248(9)(a), MCA. If no additional information is filed by this deadline, the Court will proceed with amending the claim as detailed above.

Nothing was filed. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the SWSE section 2, T3S, R9E, PARK. The legal description should be the SESWSW section 1, T3S, R9E, PARK. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided in the DNRC Memorandum is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Robert L. White
2 Rancho Plente
Livingston, MT 59047

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 195185-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT L WHITE
2 RANCHO PLENTE
LIVINGSTON, MT 59047 9183

Priority Date: DECEMBER 27, 1963

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.14 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 30.00

Source Name: YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSW	1	3S	9E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		SWSE	2	3S	9E	PARK
Total:	30.00						